

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2520

IN THE MATTERS OF:

Served January 20, 1984

Application of A.M.A. TOURS, a )  
Partnership, for Temporary )  
Authority to Conduct Special )  
and Charter Operations )

Case No. AP-83-38

Application of A.M.A. TOURS, a )  
Partnership, for a Certificate )  
of Public Convenience and )  
Necessity -- Special and Charter )  
Operations )

Case No. AP-83-39

By applications filed June 17, 1983, as amended, A.M.A. Tours (AMA), a partnership, sought both temporary authority and a certificate of public convenience and necessity to transport passengers, in special and charter operations, between points in the Metropolitan District, providing sightseeing tours and transfer service (for those taking sightseeing tours), restricted to the use of vehicles with a manufacturer's designed seating capacity of 15 passengers or less. Pursuant to Order Nos. 2452 and 2462, served August 16 and September 8, 1983, respectively, and incorporated by reference herein, public hearings on the applications 1/ were held on October 20 and October 21, 1983. While protests to the application were filed by Airport Limo, Inc., Beltway Limousine Service, Inc., and Babel Travel Service, Inc., only Babel appeared in opposition to the applications. No weight will be accorded to the protests of Airport Limo and Beltway inasmuch as they did not appear at the public hearing.

The two general partners of AMA testified at the public hearing regarding the type of service proposed and the services they have been

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1/ At the commencement of the public hearings applicant sought dismissal of AP-83-38, the temporary authority application, and the administrative law judge granted the motion to dismiss. No further discussion or consideration will be given to that application.

offering. Antulio Arias stated that the company arranges sightseeing tours for a foreign clientele, primarily Spanish-speaking persons, 2/ including hotel accommodations, restaurant reservations and related transportation service. Service had been provided for approximately three years under the belief that the company had complied with all applicable regulatory requirements. Upon learning of the need for Commission certification, the witness testified that the company ceased transportation service, with an exception discussed below, and applied for authority. AMA arranged for other carriers to provide the necessary transportation while it provided tour guides and continued making tour, hotel and restaurant arrangements. Tour arrangements generally are made by AMA on behalf of travel agencies located in Florida and New York which, in turn, book tours set up by travel agencies outside the United States. Also, some tour customers are referred to AMA by local hotel operators.

Applicant proposes to offer a city tour of buildings and monuments, a night tour of most of the city tour sights, an all-day tour including city tour sights and Mount Vernon and Alexandria, Va., and transfer service to and from Washington National and Dulles International Airports. All charges in the proposed tariff are on a per capita basis.

	<u>ADULT FARE</u>	<u>CHILDREN AGES 5-11</u>	<u>CHILDREN UNDER 5</u>
TOURS			
City Tour	\$15	\$ 7.50	FREE
Night Tour	15	7.50	FREE
All-Day Tour	25	12.50	FREE
TRANSFERS (Incidental to Tours)			
To or from National Airport	9	9	FREE
To or from Dulles Airport	15	15	FREE

The witness stated that the company intends to provide special operations service at this time as contained in its tariff. 3/ Service initially is to be provided in a seven-passenger van. In the past, approximately one-half of the company's income has been derived from transportation with the balance coming from sightseeing-guide work and other ancillary services. The witness estimated that the company has arranged transportation for about 1,000 passengers thus far in 1983. Service has been provided by several carriers certificated by this Commission as well as others not holding WMATC certificates, according to the witness.

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2/ Service has also been provided for Italian and French patrons, as well as English-speaking tourists.

3/ The application was specifically restricted to special operations authority only.

AMA was stopped by the U.S. Park Police and issued a "Courtesy Tag" for transporting passengers for hire without a WMATC Certificate on June 15, 1983. See Order No. 2452 at p.3. The witness states that this was the only instance of AMA providing service itself since the company was informed that it must hold appropriate Commission authority to transport passengers for hire. The service was rendered because of an inability to acquire an additional vehicle from another carrier on very short notice, according to the witness.

The other AMA partner, Mercedes Arias, testified that if authority is granted herein the company would use its own van to provide service for groups of seven passengers or less, but use the services of bus companies for large groups. AMA intends, at some point, to purchase a 15-passenger van to provide service for larger groups than it can now transport. The witness explained the procedures involved in arranging for other bus companies to provide transportation for AMA's customers, including details on the billing thereof. Upon clarification of Commission procedure and rules and regulations, the witness stated that in the future, only WMATC-certificated carriers would be used to provide transportation between points in the Metropolitan District.

The staff of the Commission called two witnesses to testify about the incident of June 15, 1983, when AMA was stopped by the U.S. Park Police for transporting passengers in the Metropolitan District without a WMATC certificate. Stanley Williams, an employee of Tailgate Bus Service, Inc., testified that he was asked by Western Discovery Coach to provide bus transportation service for AMA at a rate of \$25 per hour, and that he personally was paid at that rate by AMA. AMA had contracted with Western Discovery to provide the transportation, and Western Discovery, in turn, subcontracted personally with Stanley Williams. When Stanley Williams did not appear on time, AMA used its vehicle to start the tour. Prior to the late arrival of Stanley Williams, AMA was cited by the Park Police. Mr. Williams stated that his brother, Larry Williams, who is the owner of Tailgate, was not aware of this work.

Larry Williams, president of Tailgate, testified that he had no concurrent knowledge of the June 15, 1983, transportation. He stated that he was not told at the time by Stanley Williams of any work done by Stanley Williams with a Tailgate bus for AMA or for Western Discovery Coach.

Five witnesses testified in support of the application. The tour and travel sales manager of the Shoreham Hotel, Washington, D. C., is responsible for development of international and domestic tour and travel for the hotel. Most of this work is arranged through tour operators in New York and overseas. AMA is one of the carriers that have provided ground transportation for foreign hotel guests. Transportation is not arranged directly by the hotel, but the witness

stated that the referred services provided by AMA have appeared to be satisfactory, and a check by the hotel with travel agencies has shown the agencies are satisfied with AMA's service. The witness stated that, when asked, she often recommends more than one ground transportation company to travel agencies, who then choose the carrier they will use. She finds that it is helpful to have a carrier with personnel who are fluent in the native language of foreign tour groups. The witness also stated that she testified on behalf of protestant Babel at a prior hearing and has and would also continue to commend Babel to travel agencies serving the Spanish-speaking market.

The marketing director of the Holiday Inn, Washington, D. C., stated that he was familiar with AMA and had used transportation arranged by AMA in the past, although he does not actually arrange ground transportation on behalf of the hotel. He has not had occasion to recommend AMA or any other local sightseeing carrier to groups small enough to use applicant's services.

The general manager of Pamtours, a travel agency located in New York City, testified that one of his duties is to arrange tours in the Washington, D. C., area on behalf of travel agencies in South America and Europe primarily for Spanish- and Portuguese-speaking tourists. He testified that he has used protestant Babel's service and that of another local carrier, but that he eventually settled on using AMA for the Washington, D. C., area. AMA takes care of the groups from arrival at a local airport to departure at the end of the trip, including sightseeing and transfer service. The witness stated that he is satisfied with the personalized service provided by AMA.

The director of research for the Ibero-American Chamber of Commerce of Washington, D. C., testified that the chamber has a contract with the federal government to promote minority businesses in the Washington, D. C., area. The chamber has used AMA's service and has referred others to it.

The final witness for applicant, executive director for the Spanish-Speaking Community of Maryland, Inc., and chairman of the Spanish-American Chamber of Commerce for Maryland, testified (through a translator) that he has referred some people to AMA for sightseeing transportation service. He is interested in promoting Hispanic businesses and would also be willing to refer people to protestant Babel.

Protestant Babel elicited testimony from three witnesses regarding the application. The first witness (who also used the services of a translator to testify) stated that he has worked for AMA as an interpreter on several occasions. No other probative testimony

was elicited. The second witness for Babel, appearing under subpoena, (and using the services of a translator) is a local tour guide who has worked part-time for AMA. He stated that he had provided service for AMA in his own vehicle (14-passenger van) until notification from the Commission that he was required to have WMATC authority. At that point, he stated that he ceased providing transportation in the van.

The third witness, vice president of protestant Babel, stated that he is in charge of the company's day-to-day operations. He further stated that Babel holds temporary authority from the Commission 4/ and has an application for permanent authority pending. 5/ The application for temporary authority was filed shortly after learning of the need for Commission certification. The witness testified that Babel operates four vans, and offers personalized service, but asserted that the vehicles are not all in use at times, though during the busy summer season they are all in service. He mentioned several van and limousine carriers who provide service to Spanish-speaking tourists and the local Spanish-speaking community, and opined that certification of an additional carrier would harm Babel financially.

The witness explained that Babel had provided service for Pamtours but ceased such service because of delays in receiving payment. He also claimed that AMA was continuing to provide service despite the fact that AMA does not hold any WMATC authority.

The Compact, Title II, Article XII, Section 4(b) provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds:

that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied.

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4/ Order No. 2421, served May 23, 1983, authorizes charter service between the airports, Mt. Vernon, Alexandria and Arlington National Cemetery, Va., and points in the District of Columbia.

5/ Order No. 2502, served November 22, 1983, authorized issuance of a certificate for charter and special operations service, in vehicles seating 15 passengers or less, between points in the Metropolitan District. Certificate No. 103 was issued to Babel on November 28, 1983.

A finding of fitness is a prerequisite under the Compact to a grant of authority, and applicant has the burden of establishing its fitness properly to perform the proposed service in keeping with the terms and conditions of the applicable statutory and Commission requirements.

Regarding compliance fitness, the Commission does not believe, in this case, that prior operations rendered by applicant warrant the conclusion that pertinent regulatory requirements will be ignored in the future. Upon learning that authority was required to provide local sightseeing service, applicant ceased operations and filed for authority. Despite assertions by protestant's witness that AMA has continued to provide service itself after being cautioned by the Commission, no substantive proof has been presented. With respect to the June 15th trip, while evidence was presented regarding transportation performed by AMA on that day, AMA's claim that it was emergency service supplementing hired service, is uncontroverted. Applicant is advised, however, that it must fully familiarize itself with Compact requirements and avoid future violations which will be considered more harshly. 6/

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6/ We note that on January 6, 1984, Babel filed a formal complaint (Case No. FC-84-01) alleging that AMA provided unauthorized transportation after the closing of the record in this case. Babel asks the Commission to take notice of its complaint in making the decision in this case and asks that the decision in this case be delayed until the formal complaint is resolved.

AMA's answer is due 15 days after service of the complaint, according to Commission Rule 13-03. Babel has already indicated that it seeks a public hearing on its complaint. This procedure is likely to consume a significant amount of time.

The Commission finds that delaying its decision in Case No. AP-83-39 is unwarranted for the following reasons: (1) the record in Case No. AP-83-39 is complete and ripe for decision at this time; (2) there is a public need for AMA's service; (3) at the present time Case No. FC-84-01 has only the status, albeit formal status, of a yet-unanswered allegation; and (4) the Commission has a full range of remedial action available to it in the context of Case No. FC-84-01.

Accordingly, we hereby issue our decision in Case No. AP-83-39. However, the finding of fitness necessary to grant this application is without prejudice to any determination to be made in Case No. FC-84-01.

The evidence shows that applicant is financially able to provide the proposed transportation. Applicant has sufficiently demonstrated the ability to provide the proposed transportation in a reasonably efficient, expeditious and safe manner. From the financial data submitted, it appears that AMA's operations are fiscally viable. Applicant's vehicle is suitable for the proposed transportation.

The Commission must also consider whether the subject transportation is required by the public convenience and necessity, as required by Title II, Article XII, Section 4(b) of the Compact, supra.

Based on the evidence elicited at the public hearings held in this proceeding, the public has a need for the type of service specified below. A travel agency from New York has explained a need for additional personalized service, especially serving the Spanish-speaking community. In addition, local witnesses have asserted need for the special operations tour service applicant seeks to provide. There is no question that AMA has experience and ability in providing multilingual sightseeing tours and appropriate transfer service in connection with the tours. Despite the contentions of protestant's operating witness that financial harm to protestant would be engendered by a grant of this application, no probative showing of potential loss was made. It is apparent from the testimony that additional service of the type proposed herein is needed by the public. Moreover, the element of competition between applicant and protestant will enable the Spanish-speaking public to choose between two carriers specializing in service to that market.

There was testimony supporting a need for service arranged by travel agencies overseas and in New York, as well as service for local groups. Service will be restricted to vans, as requested, to be used in special operations.

THEREFORE, IT IS ORDERED:

1. That A.M.A. Tours is hereby granted authority to transport passengers, together with baggage in the same vehicle with passengers, in special operations, limited to sightseeing tours and transfers for sightseeing tour passengers, between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity for 15 passengers or less (including the driver) and further restricted against transportation between points located solely in the Commonwealth of Virginia.

2. That A.M.A. Tours is hereby directed to file (a) an affidavit of compliance with Commission Regulation No. 68 governing identification of motor vehicles, for which purpose WMATC No. 104 is hereby assigned, and (b) a certificate of insurance as required by Commission Regulation No. 62.

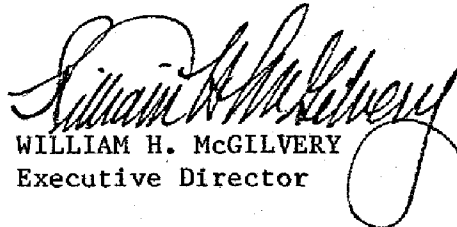
3. That A.M.A. Tours is hereby directed to file two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55.

4. That A.M.A. Tours is hereby directed to pay to the Commission the sum of \$480, said sum being the balance due to cover the cost of its hearing, pursuant to the Compact, Title II, Article XII, Section 19.

5. That upon timely compliance by A.M.A. Tours with the foregoing directives, an appropriate certificate of public convenience and necessity will be issued.

6. That unless compliance with the foregoing requirements is effected within 30 days from the date of service hereof or such additional time as the Commission may authorize, the grant of authority made herein shall be void and the application shall stand denied in its entirety effective upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director